

VILLAGE OF SOUTH BLOOMING GROVE
ZONING BOARD OF APPEALS
Regular Meeting
September 1, 2022

Members Present:

Chairman Yohoshua Bittman
Chaim Goldstein
Sholem Lieberman

Members Absent:

Peter Piampiano
Shmaya Spitzer

Also present: Melissa Foote, Secretary; Alexa Burchianti, Building Inspector; Al Fusco, Village Engineer; Gardiner Barone, Counsel; Isaac Ekstein, Assistant to the Mayor.

The meeting began with a pledge to the flag at 8:00 pm.

Secretary Melissa Foote then proceeded to do roll call. Members Peter Piampiano and Shmaya Spitzer were absent. All other members were present.

Adoption of August 11th, 2022 Minutes

Chairman Bittman made a motion to adopt the minutes from the August 11th meeting. It was seconded by Mr. Goldstein and carried unanimously.

585 Clove Road

Melissa Foote confirmed that the applicant sent all required public notices for the hearing and then read the public notice.

At 8:03 pm, Chairman Bittman made a motion to open the public hearing. It was seconded by Mr. Goldstein and carried unanimously.

Project engineer Michael Morgante then presented the project. He described the proposed 13,435 sq. ft. 4-story commercial building as being located on a parcel near the intersection of Rte. 208 and Clove Rd. He stated that the project is within the RC-1 zoning district and meets all required setback requirements, but the applicant is seeking a variance for a maximum height increase from 3 stories to 4 stories and from 40 ft. to an average height of 54 ½ ft. He added that the site has no proposed accessory structures and has proposed 114 parking spots. He also stated that the site topography, particularly an existing stream and steep slopes, necessitates the height variance and results in a building that will be taller in the front than in the back. He asserted that the

existing strip mall to the south of the project will provide good screening and that the building is not out of character with the neighborhood given the presence of other nearby commercial buildings. Lastly, he noted that the proposed floor heights of the building are the minimum of 11 and ½ ft. rather than the typical 13 ft. in order to minimize the required variance.

Chairman Bittman asked for clarification regarding the location of the front of the building in relation to Clove Rd. and asked whether the parking spaces go all the way to the back of the property line.

Mr. Morgante clarified that the building is about 109 ft. from the property line and an additional 4 or 5 ft. from the edge of Clove Rd. He also stated that the parking spaces will essentially go to the back of the property line.

Chairman Bittman then asked if any members of the public had comments.

Dawn Salka stated that the entrance to the development's parking lot was not clearly labeled on the site plan and asked for clarification regarding whether the entrance was located on Clove Rd. or Rte. 208. She also made several comments unrelated to this proposal. She broadly suggested that members of the board are being bribed by applicants, questioned the building inspector's ability to adequately inspect all ongoing projects, and asserted that all ongoing projects in the Village negatively impact the environment, traffic, and water supply.

Mr. Morgante stated that the entrance is clearly labeled on the site plan and is located on Clove Rd. He added that the applicant will work with Orange County Public Works regarding the Clove Rd. entrance and will prepare any necessary traffic studies that the county requires.

Sue Anne Vogelsberg raised concerns regarding the impact of the project on the existing stream and trees.

Mr. Morgante claimed that he reroutes streams on most of his projects. He stated that they will be working with a geotechnical engineer to ensure that the banks of the streams are properly stabilized and that they will address hydraulics so that the stream can handle flows for different types of storm events. He also noted that cutting down trees is a part of any project and that, per DEC guidelines, they will have to restrict tree-cutting activity to between November 1st and March 31st to minimize the impact on the Indiana and Northern Long-eared Bat population.

Bonnie Rum stated that Mr. Morgante was purposefully misleading regarding the height of the building during the prior ZBA meeting and claimed that the building does not match the character of the neighborhood. She also suggested that while the Villages claims to support expansion, she feels that it is discriminatory in its encouragement of expansion.

Mr. Morgante asserted that Ms. Rum's comments were derogatory and false and that the site plan explicitly shows detailed and accurate heights.

Lindsay Dickson commented that he feels Zoom meetings are cowardly and asked why basements are not counted as floors. He asserted that the site plan does not provide the public with enough information and is too difficult for a layperson to read. Lastly, he complained that 11 and ½ ft. floors are too tall.

Counsel Gardiner Barone stated that the applicant's presentation was reasonably detailed and claimed that he had fewer questions than usual. He then asked Mr. Morgante a series of questions.

He first asked for clarification regarding how the height of the building is calculated.

Mr. Morgante stated that the height is the average of all four walls.

Mr. Barone then asked for confirmation that if the ZBA granted the requested variances, the applicant would then need to appear in front of the Planning Board for site plan approval.

Mr. Morgante confirmed this.

Mr. Barone then asked for confirmation that approvals granted by the ZBA do not diminish the responsibility of the Planning Board to investigate matters pertaining to a site plan approval.

Mr. Morgante confirmed this.

Mr. Barone then asked if the planning board is expected to set certain clearing limits in the event of a site plan approval.

Mr. Morgante stated that setting such limits would be in the jurisdiction of the Planning Board.

Mr. Barone proceeded to ask if it would be possible for the applicant to limit the parking spaces and instead widen the building to limit the height of the building.

Mr. Morgante stated it would be possible but would require about 45 fewer parking spaces, which would not be a viable option.

Mr. Barone then asked how much of the upper 5-10 ft. of the building would be visible from Rte. 208.

Mr. Morgante stated that the upper portion of the building would only be visible from a small triangular area where Rte. 208 and Clove Rd. intersect.

Mr. Barone asked for confirmation that someone driving the posted speed limit in this small triangular section would need to turn their head to see the building, and if so, they would only see the upper portion of the building for a few seconds.

Mr. Morgante confirmed this.

Mr. Barone asked if the building is in the viewshed of any scenic areas.

Mr. Morgante replied that it is located within a scenic road overlay, but nothing unique.

Mr. Barone asked if the top of the building would be visible to neighbors.

Mr. Morgante stated that he does not believe that the top of the building would be visible to neighbors.

Mr. Barone asked what percentage of the height of the building would be for architectural or aesthetic purposes.

Mr. Morgante replied that the top 3 ft. of the building will be dedicated to a parapet. He noted that 5 ft. is typical for a parapet, but the applicant reduced the height of the parapet to reduce the overall height of the building.

Mr. Barone asked why the applicant wants a 4-story building rather than a 3-story building.

Mr. Morgante replied that the 4th story is necessary to provide the Village with a solid tax rateable, to recoup development costs due to the above-average development costs associated with developing on a challenging site, and to provide development for the Village.

Mr. Barone stated that he had no further questions.

Mr. Goldstein then asked if there was consideration for dedicating land for future road widening and if the applicant had considered a larger building with underground parking.

Mr. Morgante stated that dedicating land has not been considered yet as part of the planning process. He noted that if the village were to require it, they do potentially have land along the frontage. He also stated that the stream prevented their ability to construct an underground parking garage with proper ventilation.

Mr. Lieberman asked if there is a way to dig deeper to limit the height of the building.

Mr. Morgante replied that they want to raise the grade in the front to give the perception that the building is not as tall. He also stated that the variance they are seeking is the absolute maximum height of the building and they will continue to look at creative ways to potentially reduce it further during the Planning Board process.

Chairman Bittman then made a motion to continue the public hearing during the next meeting. It was seconded by Mr. Lieberman and carried unanimously.

Mr. Morgante added that they are still waiting for comments from the Orange County Department of Planning, so the hearing could not have been closed.

379 Lake Shore Drive

Melissa Foote confirmed that the applicant sent all required public notices for the hearing and then read the public notice.

At 8:45 pm, Chairman Bittman made a motion to open the public hearing. It was seconded by Mr. Goldstein and carried unanimously.

Project engineer Michael Morgante then presented the project, which he noted is located near the intersection of Lake Shore Dr. and Robin Ln. He described the project as a 3-story 3620 sq. ft. house of worship with 24 parking spaces. He stated that there is an existing 2-story residential building and that the site is adjacent to Merriewold Lake and the beginning of Satterley Creek. He noted that the site is situated in a 100-year flood zone with a flood line of 477 ft. and that there are existing utilities to serve the project. He claimed that the site is located in the 235-14C zoning code and that the applicant is seeking variances for a front yard setback reduction from 45 ft. to 10.2 ft. and a maximum building height increase from 35 ft. to 44 ft. He noted that this is a small house of worship and that most congregants will likely walk to the building during religious activities. He also added that they have prepared a grading plan for the first-floor elevation of slightly more than 2 ft. above the 477 ft. flood line and that the building must be raised out of the ground due to the flood zone, which is the predominant reason for the requested height variance.

Chairman Bittman asked for clarification on the floor heights.

Mr. Morgante clarified that the height of the first floor is 8 ft. and the floors above are 9 ft.

Chairman Bittman then asked if any members of the public had comments.

Sue Anne Vogelsberg stated that the project does not match the character of the neighborhood due to its height and raised concern regarding nearby bodies of water being a potential safety hazard for children

Mr. Morgante stated that the site would be fenced to prevent access to nearby bodies of water. He also stated that the height of the building is primarily the result of being located in a flood zone and that the number of floors is dictated by religious requirements.

Ms. Vogelsberg replied that the applicant should have chosen a different site for the project given the required variances to make the site viable.

Mr. Morgante noted economic feasibility was also a major factor and that the applicant likely did his due diligence and determined this site to be the most economically feasible. He added that they are doing the best they can to engineer the site.

Mr. Barone then asked Mr. Morgante a series of questions. He first asked what zoning district the site is located in.

Mr. Morgante replied that the site was located in RR zoning when the application was initially submitted but has since been moved to RB zoning. He also stated that the property is subject to the 235-14C zoning code because of the age of the lot.

Mr. Barone asked if a house of worship is permitted in the RB zoning district.

Mr. Morgante confirmed that a house of worship is permitted in the RB zoning district.

Mr. Barone asked if there are any portions of the interior building that will not be for religious use or will not be supportive of a religious use.

Mr. Morgante stated no and added that this is why a detailed floor plan was provided.

Chairman Bittman asked what the top floor will be used for.

Mr. Morgante stated that the Rabbi's living quarters are on the top floor.

Mr. Barone asked how many parking spaces are being proposed.

Mr. Morgante stated that there are 24 total parking spaces located along the front yard and along the side yard.

Mr. Barone asked whether the applicant considered reducing the number of parking spaces in order to reduce the variance required for the front yard setback.

Mr. Morgante stated that the parking is already so limited that cutting back further was not viable, though he added that most congregants will not be driving to shul.

Mr. Barone asked for confirmation that this was the only lot that was available and within the financial means of the congregation.

Mr. Morgante confirmed that this was his understanding.

Mr. Barone then asked if it was fair to say that the site selection process was in large part based on where the congregants live and could not be placed 5 miles away.

Mr. Morgante confirmed this.

Mr. Barone asked if the board is being asked to grant the variances under the federal RLUIPA statute for religious land use matters.

Mr. Morgante confirmed this.

Mr. Barone noted that this means that the municipality has more of an obligation to consider or suggest reasonable or available alternatives to the applicant to accommodate religious land use needs. He then asked for Village Engineer Al Fusco's feedback.

Mr. Fusco stated that he spoke with Mr. Morgante and the applicant about potentially moving the building back a little bit, but upon further review, he realized that the floodplain and high groundwater prevented this from being an option. He also noted that he worked with Mr. Morgante on limiting the parking, but it cannot be reasonably limited further.

Chairman Bittman asked how close the building will be to the road.

Mr. Morgante stated that will be about 20 ft. away from the road.

Chairman Bittman then asked if there was any way to lower the height of the building and asked how high the aesthetic design at the top of the building is.

Mr. Morgante stated that he did not have the proper dimensions available to make a full determination but noted that the top of the building is likely in the range of 4 to 5 ft.

Ezra Fried commented that he feels that the project is very important for the community and should be approved as soon as possible.

Sandy Stern commented that he feels that the project is very important for the community and that having a shul within walking distance will improve the safety of the community.

Al Fusco advised that there is no 239 for this project because it is more than 500 ft. away from Rte. 208

Isaac Eckstein advised that the next meeting was mistakenly scheduled during the middle of the Sukkot holiday and the board agreed to reschedule it to October 20th, 2022.

Chairman Bittman then made a motion to continue the public hearing for 379 Lake Shore Drive during the next meeting on October 20th, 2022. It was seconded by Mr. Goldstein and carried unanimously.

Chairman Bittman then made a motion to continue the public hearing for 585 Clove Road during the next meeting on October 20th, 2022. It was seconded by Mr. Goldstein and carried unanimously.

Chairman Bittman then made a motion to close the ZBA meeting. It was seconded by Mr. Goldstein and carried unanimously.